U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 23 2005
SRC 04 123 51712

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as the chief operating officer of Adapt Telephony Services, LLC. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel discusses the petitioner's work:

> As Chief Technology Officer for Aronov Realty Management, Inc., in Montgomery, Alabama, a multinational manager of commercial and residential real estate, and as chief technology consultant for Aronov's affiliated companies, [the petitioner] was instrumental in establishing the latest telephony services and call center technologies. As Chief Operating Officer for Adapt Telephony Services, L.L.C., of Chicago, Illinois, [the petitioner] has taken on a much greater role in the call center industry. . . .
>
> [The petitioner's] current employer, Adapt Telephony Services, L.L.C., provides cutting-edge communications solutions to its customers by using digital technology to help them increase the efficiencies of critical business operations. . . . Adapt is a systems integrator of voice and data services for contact centers and businesses. . . . The Petitioner supervises a staff of 17, runs all day-to-day operations of Adapt, and reports directly to the President.

The petitioner has submitted letters from several clients and associates, who claim that the petitioner has been responsible for significant projects for major clients including Microsoft, Amazon.com, and the United States Postal Service. Weiyee In, managing director of Terra Nova Institutional, states: "I consider [the petitioner] to be above and beyond 99% of his cohorts and [he] is clearly regarded as a leader in his field."

The director, in denying the petition, offered only the general finding that the petitioner has not met the requirements set forth in *Matter of New York State Dept. of Transportation*. The director did not discuss any

of the specifics of the petitioner's claim or any of the petitioner's letters, much less explain why these materials were insufficient. Thus, the director provided the petitioner and counsel with little guidance as to how to construct an effective appeal.

It appears, from review of the witness letters in the record, that the petitioner may be able to establish eligibility. First, however, the director must allow the petitioner a meaningful opportunity to remedy certain deficiencies in the record. For instance, witnesses claim that the petitioner has undertaken projects for major corporations and government entities. The record, however, contains no evidence from those entities to confirm that the petitioner did this work, or to establish its importance. These projects could indicate a significant reputation within the petitioner's field, but at the same time, a large corporation, simply by virtue of its size, will tend to hire more contractors and consultants than would a smaller company. There could be hundreds or thousands of firms that can name, say, Microsoft as a client. The petitioner should submit documentary evidence of the work performed, as well as letters from authorized officials of the companies and other entities, describing the significance of the work undertaken and the petitioner's responsibility for that work. We stress, here, that customer satisfaction is not a *prima facie* basis for a national interest waiver, nor is activity that gives one U.S. business a competitive advantage over its U.S. competitors. Thus, the petitioner must show not only that the clients are happy with the results of the petitioner's work, but also that the effects of that work go beyond smoother operation of customer communications.

The director should also inquire as to why the petitioner continues to reside in Montgomery, Alabama, more than a year after he supposedly became a top executive of a company in Chicago, Illinois. To resolve this issue, the director should instruct the petitioner to submit materials from Adapt Telephony Services, establishing what arrangements have been made that would allow the petitioner to act in an executive capacity and supervise 17 subordinates (named on an organization chart in the record) and to participate in "regular . . . meetings with the president" (required on the job description for the position) from a location more than 700 miles south of Adapt's corporate headquarters. This possible discrepancy highlights the importance of objective, documentary evidence, and the confusion that can result in its absence. Personal statements from the petitioner or from counsel will not suffice in this regard.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.